

3/27/02

THIS DISPOSITION IS  
NOT CITABLE AS  
PRECEDENT OF THE  
TTAB

Paper No. 16  
DEB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Solvent Solutions, Inc.

Serial No. 75/497,612

David G. Boutell of Flynn Thiel Boutell & Tanis, P.C. for  
Solvent Solutions, Inc.

Jason I. Roth, Trademark Examining Attorney, Law Office 115  
(Tomas Vlcek, Managing Attorney).

Before Cissel, Quinn and Bucher, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

On May 29, 1998, applicant filed the above-referenced application to register the mark BIG BLUE on the Principal Register for "chemical concentrate for mixing with water to form windshield washer fluid," in International Class 1. The application was based upon applicant's assertion that it possessed a *bona fide* intention to use the mark in commerce in connection with the listed goods.

After the application was approved for publication, on January 5, 2000, applicant filed a Statement of Use under

37 C.F.R. §2.88, claiming that applicant had used the mark in interstate commerce since November 30, 1998 by applying it to labels on containers of applicant's goods. Specimens of use were attached including the following relevant portion:



The Trademark Examining Attorney refused registration on the grounds that while these specimens display the mark as BIG BLUE PLUS, the drawing page shows that applicant's mark is merely BIG BLUE. Applicant argued that its mark is merely BIG BLUE, that these specimens support the instant drawing and, hence, that there was no need to submit substitute specimens. At that point, the Trademark Examining Attorney issued a final refusal based upon applicant's noncompliance with the requirement for substitute specimens.

The Trademark Examining Attorney and applicant have fully briefed this case, but applicant did not request an oral hearing before the Board. We reverse the refusal to register.

Purchasers and prospective purchasers of applicant's goods will normally encounter the mark BIG BLUE as it appears on the containers for the goods, and such use will normally trigger the viewer's reaction to the mark as so displayed. The specimen labels, as shown above, show use of BIG BLUE on a separate line from the term PLUS. Furthermore, while clearly not in itself determinative of the result herein, applicant has made a clear effort to emphasize the BIG BLUE portion of this grouping by following it with the informal notification, ™. Applicant argues as follows:

Applicant intends to market a "family" of windshield washer fluid products under the mark BIG BLUE. The first member of the family is named BIG BLUE™ PLUS. Development of the composition of the second member of the BIG BLUE family is still pending as is the suffix (or prefix) for it.

(applicant's response of August 21, 2000, p. 1).

As we view these specimens, the Trademark Examining Attorney has been too rigid in insisting that the term BIG BLUE is part of a unitary phrase with PLUS. Of course, if applicant had so chosen, it could have used these specimens

to support registration of the composite mark, BIG BLUE PLUS, but applicant's decision to use these specimens to support the registration of BIG BLUE alone should also be within its discretion. PLUS is arguably not an integral part of any unitary expression as presented herein. Given the highly suggestive nature of the word PLUS, it is likely that customers and prospective purchasers of applicant's goods will separate BIG BLUE PLUS into its component parts and utilize BIG BLUE alone to call for and refer to these goods.

Accordingly, under these circumstances, we conclude that BIG BLUE is not used merely as a part of a unitary phrase BIG BLUE PLUS, and that, as used on the specimens of record, BIG BLUE does function as a trademark in and of itself.

Decision: The refusal to register is reversed.